

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.6972/2014**

% **4th March, 2015**

SMT. ARCHANA BANSAL & ORS. Petitioners
Through: Mr. Pawan Upadhyay, Advocate.

versus

DIRECTORATE OF EDUCATION AND ANR. Respondents
Through: Mr. Amiet Andlay, Advocate for
respondent No.1.
Mr. P.D. Gupta, Advocate with Mr.
Kamal Gupta, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioners who are the legal heirs of late employee Sh. K.K. Bansal, impugn the order passed by the employer-school dated 22.7.2014 under Rule 121 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules') with respect to disentitlement of balance 50% of pay in the period of service of the employee from 1.4.2002 to 22.7.2003.

That the petitioners are entitled to be paid the other 50% amount and which

has been earlier granted by the school under Rule 121 of the Rules is not in dispute and what is in dispute is that whether legal heirs of the employee could have got 100% of the pay for the period in which he did not work with the school on account of termination of employment, and which termination order is subsequently set aside.

2. The impugned order gives the following reasons for declining the relief to the extent of 50% of the salary and holding that the balance 50% amount already deposited in this Court be withdrawn by the petitioners. The relevant portions of the impugned order read as under:-

“(1) The Hon’ble High Court of Delhi, by its orders dated 28.3.2014 and 20.5.2014 had specifically limited/restricted the claim of the legal heirs of late Sh. K.K. Bansal to the arrears of salary payable to him for the period between 1.4.2002 and 22.7.2003 only. Hence, no salary whatsoever is admissible to the legal heirs for any period prior, beyond or other than the aforesaid period.

(2) That since the legal heirs of late Sh. K.K. Bansal deliberately, despite opportunity and requisition, failed to did not produce the income-tax returns of late Sh. K.K. Bansal for the years 2002-03 and 2003-04 or nay other relevant statement of account/balance sheet for the period in question, they thus totally failed to substantiate that the late Sh. K.K. Bansal remained unemployed during the period between 1.4.2002 and 22.7.2003. No reasons whatsoever had been assigned by the legal heirs of late Sh. K.K. Bansal for not having produced the ITRs and relevant statement of account for the said period. The Managing Committee is of the form opinion that the said documents have been withheld by the legal heirs deliberately and with mala fide documents have been

withheld by the legal heirs deliberately and with mala fide intent to hide the income of the late Sh. K.K. Bansal for the said period, during which he is said to have remained unemployed.

(3) That in terms of the law of the land, the principle of ‘No Work No Pay’ is applicable to all the employees. Admittedly, Sh. K. K. Bansal did not work with the school for the period between 1.4.2002 and 22.7.2003 and as such, is not entitled to any salary and allowances for the said period. Despite it, the Managing Committee resolved to pay 50% of the salary and allowances for the said period as well. Rule 121 of DSER, 1973 does not in any manner limit or circumscribe the power of the Managing Committee of a private unaided school to decide the arrears of salary and allowances payable to only the circumstances enumerated therein. The arrears of salary and allowances are required to be determined by the Managing Committee keeping in view the relevant and material facts such as whether the employee was working anywhere, whether the employee has been able to substantiate his claim of unemployment, whether the employee or his heirs have deliberately not produced material documents to support the claim of absolute unemployment and so on and so forth.

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NOW, THEREFORE, the above named legal heirs are hereby asked to withdraw the above stated amount of Rs.1,52,761/- (Rupees One Lac Fifty Two Thousand Seven Hundred Sixty One only) from the amount of Rs.2,92,425/- (Rupees Two Lac Ninety Two Thousand Four Hundred and Twenty Five only) already deposited with the Hon’ble High Court of Delhi vide Manager’s Drafted No.006818 dated January 10, 2012 drawn on the HDFC Bank Limited, Club Road, Punjabi Bagh, New Delhi-110026 in favour of the Registrar General, Delhi High Court.”
(underlining added)

3. I find no infirmity in the impugned order because not only the petitioners are guilty of concealment of the record which was necessary to know that whether the employee had worked elsewhere in the relevant

period and had earned income, but also because an employee whose services are reinstated is not automatically entitled to 100% of the entire monetary emoluments. Also, it requires to be noted that it always takes some amount of expenditure to earn the total monetary emoluments by an employee and thus 100% back wages need not be granted, and which aspect is in addition to the fact that once an employee has not served the employer it is not that automatically 100% of the wages and all consequent monetary emoluments are payable. As already noted above, 50% of the amounts for the relevant period have already been paid to the petitioners.

4. Dismissed.

MARCH 04, 2015
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VALMIKI J. MEHTA, J.